

Work-in-Progress
Privately Funded Developer -
Homeowner Build Projects
\$\$\$ - Completed Projects
T & J Investments



Attorneys & Counselors at Law

Christopher R. Pieper
414 E. Broadway, Suite 100
Columbia, MO 65201
www.bbdlc.com

E-mail: cpieper@bbdlc.com
Telephone: (573) 355-5045

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Department of Natural Resources
Water Protection Program
P.O. Box 176
Jefferson City, MO 6510-0176
ATTN: NPDES Operating Permits/Permit Comments

Via email to: publicnoticenpdes@dnr.mo.gov

**Re: Draft Missouri State Operating Permit No. MO-0124494
Page Property WWTF**

Dear Sir or Ma'am:

Please accept this comment submitted on behalf of the Boone County Regional Sewer District (the "District") regarding draft Missouri State Operating Permit No. MO-0124494 at the Page Property facility (the "Permit") issued by the Missouri Department of Natural Resources (the "DNR").

I. Background

A. Continuing Authority

Clean Water Commission regulations at 10 CSR 20-6.010(2) require each permit application to identify the continuing authority that is the owner of, operator of, or area-wide management authority for a water contaminant source, point source, wastewater treatment facility, or sewer collection system with responsibility for compliance with all permit conditions. The regulation establishes five preferential levels for continuing authorities—with Level 1 being the highest and Level 5 being the lowest. The regulation generally requires DNR to issue permits to a higher-preference continuing authority.

Provided that the use of a lower-level continuing authority does not conflict with any area-wide management plan, DNR may only issue a permit to a Level 3, 4, or 5 applicant if it provides proof with its application that a Level 1 or 2 authority: (1) is not available; (2) does not have jurisdiction; or (3) is forbidden by state or local law from providing service. DNR may issue a permit to lower-level authority applicant that provides proof with its application showing that one of the following requirements listed in paragraphs (2)(C)1.-7. of 10 CSR 20-6.010(2) is met:

- The existing higher authority has issued a waiver declining the offer to accept management of the additional wastewater;
- The existing higher authority declined to respond to the lower-level authority's request for a waiver;
- The lower-level authority submits a to-scale map showing all parts of the legal boundary of the facility's property are beyond 2,000 feet from the collection (sewer) system operated by the higher authority;
- A proposed connection or adoption charge by the higher authority is not economically feasible;
- A proposed service fee on the users of the system by the higher authority is above what is affordable for existing homeowners in that area;
- Terms for connection or adoption by the higher authority would require more than two (2) years to achieve full sewer service; or
- Terms for connection or adoption by the higher authority are not viable or feasible to homeowners in the area.

B. The District

As DNR is aware, the District is a common sewer district created under Chapter 204, RSMo., a political subdivision, and a public utility. The District's voter-approved territory is all of Boone County, Missouri. The District also has been approved by the Missouri Clean Water Commission (CWC) as a Level 2 continuing authority for areas of Boone County not served by municipal wastewater systems.

By virtue of Chapter 204, RSMo and its status as Level 2 continuing authority, the District has long-term planning authority in Boone County, and it has exercised this authority for decades to promote the public health and environment. In furtherance of this authority, the District has adopted Sanitary Sewer Use Regulations (District's Regulations) prohibiting the ownership and operation of private sewer systems in Boone County without the District's consent.¹ In addition, District Regulations require non-exempt wastewater collection systems and treatment facilities to

¹ See §§ 204.320 and 204.330, RSMo; § 644.027, RSMo; District's Regulations, § 2.7.4.1 ("Unless exempt from the provisions of these regulations, no owner or other person shall operate any wastewater collection system and/or treatment facility not owned by the District except under an operating permit issued by the District."). District regulations operate in tandem with the Boone County Land Use Regulations ("Land Use Regulations") and the Boone County Commission's Zoning Ordinance. Section 3.1 of the Land Use Regulation provides that "No privately owned or operated sewage collection system or treatment facilities shall be permitted except as authorized by public governmental agency having jurisdiction."

be conveyed to the District or connected to a District owned or operated public sanitary sewer.² The District's Board of Trustees has also adopted a long-term regional sewer service and treatment plan for areas within Boone County.

II. Draft Permit

The Permit acknowledges that the facility is located within the jurisdiction of a higher-level continuing authority and that 10 CSR 20-6.010(2) requires the higher-level continuing authority be utilized, if available. The Permit indicates that the applicant is a Level 4 authority but that there is a Level 2 authority available to the facility—the City of Columbia. *See* Permit, p. 6. The Permit notes that flows from this facility would go to a City-owned facility, although connection would occur to a District line to the east of the property, with flows directed to the City collection system and City collection and treatment system. Permit Fact Sheet, p. 17. The facility is already annexed and located within the City. *Id.*

Despite the foregoing, the applicant proposes the use of a lower-level continuing authority based on “[d]ocumentation that the proposed connection or adopting charge by the higher authority would equal or exceed what is economically feasible for the applicant, which may be in the range of one hundred twenty percent (120%) of the applicant’s cost for constructing or operating a wastewater treatment system.” Permit Fact Sheet, p. 8-9; *see also* 10 CSR 20-6.010.2(C).4. The Permit indicates that the “documentation” submitted by the applicant includes the facility reporting an annual operating cost of \$275, although there is nothing to indicate that DNR conducted any investigation to verify the accuracy of this self-reported estimate. *See* Permit Fact Sheet, p. 17. In determining whether the applicant submitted documentation on economic feasibility, DNR appears to have compared 120% of this annual operating cost estimate—\$330—with the City connection fee of \$2,400 added to a cost estimate for connection to the District system of \$38,741.26—for a total of \$41,141.26. *Id.* Based on this comparison, DNR determines that utilizing the higher-level continuing authority would represent a 14,960% increase over the current annual operating cost for the facility. *Id.*

The above economic feasibility analysis fails to comply with 10 CSR 20-6.010.2(C).4. Connection to the District and discharge to the City provides a permanent operational solution, while continued operation by the applicant pursuant to the Permit would provide an operational solution for a minimum of five years—i.e. the duration of the Permit—or for as many as 10 years based on the time during which DNR previously allowed the facility to operate under an expired permit, notwithstanding uncorrected compliance issues found after permit expiration. Accordingly, even accepting the applicant’s unverified annual operating cost figure as “documentation,” this annual operating cost should be multiplied by at least five and as many as 10 in order to provide a more accurate comparison to the costs indicated for connection to the District and discharge to the City.

² District’s Regulations, § 2.7.1.8 and § 2.6.2.3 (Allowing for a private system only “[i]f neither the District under the provisions of these regulations nor any other public or governmental agency having jurisdiction is willing and/or able to provide wastewater collection and treatment services” in an area where such services are required and “a [DNR] issued operating permit is applicable.” This regulation further requires DNR to deny transfer of an existing operating permit when the District requires an operator to connect under its Regulations.).

In addition to the annual operating cost, DNR should also take into account the additional costs necessary to operate the facility in compliance with the Permit. Although the facility is not currently under an enforcement action, the Permit indicates that it has had compliance problems in the past and suggests that some compliance issues are yet to be corrected.³ Moreover, the Permit expressly provides that the “full implementation of this operating permit, **which includes implementation of any applicable schedules of compliance**, shall constitute compliance with all applicable federal and state statutes and regulations. . .” Permit, p. 4 (emphasis added). The Permit imposes a Schedule of Compliance (SOC) requiring the facility to “attain compliance with final effluent limitations as soon as possible but in no case later than **four (4) years** of the effective date of this permit.” *Id.* (emphasis in original).⁴ The Permit also includes various special conditions that will require the applicant to incur additional costs to operate the facility. Each of the foregoing are operating costs that should be added to the self-reported annual operating cost estimate provided by the applicant in order to evaluate economic feasibility in the manner required by the regulation.

Furthermore, it is not clear the source or veracity of the cost estimate for District connection reported by the applicant and used in evaluating economic feasibility and therefore the cost estimate should be disregarded. The Permit references an “engineering report” that is “below” but the report is not included with the Permit materials, and therefore the District has no way of determining its accuracy. We are not aware that the applicant has availed itself of the process described on the District webpage referenced in the Permit, which can include identifying and providing assistance with funding sources such as a Neighborhood Improvement District (NID). See Permit Fact Sheet, p. 17 (citing <https://bcrsd.com/connecttopublicsewer>). Based on the foregoing, the applicant has failed to satisfy the requirement of providing proof with its application satisfying 10 CSR 20-6.010(2)(C).4, and therefore the Permit should not be issued.

The Permit notes that the applicant may utilize a lower preference continuing authority when a higher-level authority is available, provided that it does not conflict with any “regional sewage service and treatment plan” by the higher-level authority. As discussed above, District regulations and long-term plan prohibit the ownership and operation of private sewer systems in unincorporated Boone County without the District’s consent. The District has not provided its consent for the applicant to operate a system. Accordingly, the Permit should not be issued to the applicant because doing so would be in conflict with a long-term plan for providing sewage service and treatment on a regional basis within Boone County.

In the event that DNR issues the Permit notwithstanding the failure to satisfy 10 CSR 20-6.010(2)(C).4 and the failure of applicant to receive the District’s consent, the Permit should

³ See Permit Fact Sheet, p. 7 (noting compliance issues including failure to submit DMRs, failure to provide proper warning signs on all sides of the facility fence, failure to maintain berms, failure to provide an outfall, and cause of pollution or placement of water contaminated in a location where it is reasonably certain to cause pollution to waters of the state.)

⁴ The Permit contemplates that additional costs will be incurred in order to operate the system, providing that “[o]nce the permit holder’s engineer has completed facility design **with actual costs associated with permit compliance**, it may be necessary for the permit holder to request additional time within the schedule of compliance.” Permit Fact Sheet, p. 11 (emphasis added). Indeed, the “suggested milestone” for year 1 is to “[i]dentify funding source and hire engineer. Submit plans and specifications to the Department. Apply for construction permit if applicable.” *Id.* (emphasis added).

clearly reflect that the lower-level continuing authority is valid only until permit expiration or modification and that at permit renewal or modification, the permittee must provide a new demonstration for use of a lower continuing authority per 10 CSR 20-6.010(2)(C). Because the applicant is relying exclusively on economic feasibility to justify use of a lower-level continuing authority, the Permit should reflect that the applicant is precluded from asserting any alternative justification at permit renewal or modification, since it had the opportunity to attempt a demonstration on other grounds here but did not do so.

We appreciate your consideration of the foregoing comments. If you have any questions or would like to discuss this matter, please do not hesitate to contact me at cpieper@bbdlc.com or 573-355-5045.

Very truly yours,



Christopher R. Pieper
General Counsel
Boone County Regional Sewer District

cc: Tom Ratermann, Boone County Regional Sewer District

